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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Supreme Court No. R-20-0004

**PETITION TO AMEND RULE 3.2,
RULE 4.1, AND RULE 41, FORMS
2(a) AND 2(b), ARIZONA RULES
OF CRIMINAL PROCEDURE**

**COMMENT OF
THE ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL**

I. BACKGROUND OF PETITION

Generally, a person arrested on a warrant must be taken before a magistrate for an initial appearance. Rule 4.1, Ariz. R. Crim. P.; A.R.S. § 13-3897. In 2019, the Administrative Office of the Courts convened an Arrest Warrant Workgroup ("Workgroup") to address an issue expressed by county attorneys on whether a person arrested on a warrant with a set bond amount could post the bond and be released before an initial appearance. The Workgroup was comprised of judges from all levels of the trial court judiciary. Based on its study and discussion, the Workgroup has proposed amendments to Criminal Rules 3.2 and 4.1 and their

1 corresponding forms. The Arizona Prosecuting Attorneys' Advisory Council
2 ("APAAC") has considered the proposed rule changes in the petition and supports
3 them. The revisions present needed clarifications to these rules and forms and
4 provide guidance to both law enforcement and courts on the process involving arrest
5 warrants.

7 **II. DISCUSSION/ANALYSIS**

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9 The intent of the Workgroup proposal is to clarify and simplify existing
10 criminal rules that do not adequately address the procedure when an issuing
11 magistrate sets a bond amount in a warrant. Currently, the law *requires* an initial
12 appearance before the magistrate issuing a warrant (or nearest magistrate in that
13 county). However, arrestees routinely bypass that requirement when they are
14 immediately released after posting a set bond. Despite the legal requirement of an
15 initial appearance, there are benefits to an immediate release, particularly on
16 misdemeanor warrants where incarceration costs, employment disruptions, and the
17 issuing magistrate's own intent in setting a bond amount mitigate against holding an
18 arrestee for an initial appearance. But the law and current practice conflict.

21 The Workgroup concluded that the rules should differentiate between felony
22 and misdemeanor warrants. That differentiation would allow a person arrested on a
23 misdemeanor warrant to post a bond and be released before initial appearance but
24 require a person arrested on a felony warrant to be held until initial appearance, even
25

1 if a bond could be posted. Because of the changed circumstances that can occur
2 between the time a warrant is issued and an actual arrest, the proposed revisions
3 provide that if the issuing magistrate sets a bond amount on a felony warrant, that
4 recommended amount is not binding on the initial appearance magistrate, who must
5 make a separate and independent determination of release conditions, including an
6 appropriate bond amount.
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9 APAAC believes that the proposed differentiation between felony and
10 misdemeanor arrest warrants with a set bond amount has the benefits of following
11 the proper procedure set forth in Rule 4.2, including setting of release conditions
12 under Rule 7.2 in felony matters, while not imposing an additional burden on
13 arrestees in misdemeanor matters. For misdemeanors, the bond posted on the
14 misdemeanor warrant is sufficient to ensure future appearance by the arrestee and
15 comply with the criminal rules. Notably, under the proposal the issuing magistrate
16 could still prevent immediate release on misdemeanor warrants. Proposed Form 2(b)
17 (“Misdemeanor Arrest Warrant”) contains check boxes that allow the issuing
18 magistrate to prohibit release prior to an initial appearance in those misdemeanor
19 matters it deemed appropriate, regardless of a bond being posted.
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22 **III. CONCLUSION**

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24 The Arizona Prosecuting Attorneys’ Advisory Council commends the
25 Workgroup in addressing an ambiguity in the criminal rules involving arrest

1 warrants and in proposing a solution that both clarifies and simplifies the process
2 when a person is arrested with a set bond amount. Accordingly, APAAC supports
3 the proposal in this petition.
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5 RESPECTFULLY SUBMITTED this 1st day of April, 2020.

6 Elizabeth Burton Ortiz
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8 Executive Director
9 Arizona Prosecuting Attorneys'
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11 Electronic copy filed with the
12 Clerk of the Arizona Supreme Court
13 this 2nd day of April, 2020.

14 By: Kiana Cooney